

Editorial: The Public Records Act can be messy, but it's your right

By Steven Friederich
Vidette Editor

Requesting public records is easy. Responding to records can be messy.

There's a right way and a wrong way, and attitude is everything.

City Attorney Dan Glenn tells me that in the two years I've been editor of *The Vidette*, staff have spent "hundreds of staff hours" responding to my record requests, typically surrounding the various actions taken by the city administration of Montesano. He's probably right. Never before in the 18 years I've been writing professionally and doing public record requests have I had to do as many as I have in such quick succession as I have with the city of Montesano.

It's bizarre. It's unreal. It was apparently to the point that the city administrator wanted to budget for a clerk to partially spread the work load of responding to record requests.

And to the residents of Montesano, I say: You're welcome.

Without the use of the state Public Records Act, we would never have found out the inner details of the seven or eight or nine investigations that happened in the past couple of years. (Does anyone really know how many there were? They seemed to blend in with one another).

But, it's not like public record requests are solely for the benefit of the media or a few bloggers. If you want to know what's going on with your city hall, you have a complete right to request information. Here's some tips I've gathered to help you out.

Identify the records you want — try to be as specific as you can.

Determine where the records exist — is it at City Hall or is it at the county?

Although it's not required by state law, my advice is to make your request in writing. I prefer to do it in email so I have a confirmed time and date stamp of when it was sent. If the government official insists you fill out a form, tell them you don't have to and have them just staple your email to their form

— and get them to fill it out. Sometimes the challenging part of a records request is to figure out where to send it. I remember scouring the city of McCleary's website in January of last year when I wanted to do a records request and, after spending a good 20 minutes, I just couldn't figure it out. So, I sent the request to the city attorney — who promptly told me I did it wrong.

Some jurisdictions have their attorney as the main point of contact for record requests. Some use their city administrator or clerk-treasurer. Nonetheless, the key in sending the request via email is figuring out who the public records officer is. If it's not on the website, call the agency and ask — although, I've done that before and had a local government official once give me the wrong person.

If you don't need copies, don't ask for copies. You're required to pay for copies. Some jurisdictions, such as McCleary, even charge to email you copies. You are allowed to request access to public records for free. Access is the key word. That means the public body must produce the records you seek in a timely manner. However, timeliness is all relative.

If your record request is controversial in nature, expect the agency to give a third party a 10-day window to seek a court injunction to stop the release of the records. Three times, in my lifetime, have I had to go to court to defend my right to retrieve public records.

There may also be exemptions to things like privacy and certain court rulings that impact whether part of the records need to be redacted. There are actually about 300 specific statutory exemptions.

Sometimes, the records you want may not exist. I think I requested emails between Port commissioners and those involved with the coal and oil train proposals these past few years at least half a dozen times. The Port commissioners rarely use their email. Instead, they have taken the advice often given by the Municipal Research and Services Center, and they meet and talk about sensitive issues in person, often during legally acceptable executive sessions.

If you think there should be a specific kind of record that wasn't provided, ask about it. And keep asking. That's what Dan Wood did in order to figure

out how much the city attorney makes among the four jurisdictions — \$231,000, likely one of the highest paid public official in the county.

Here's my quick advice to local government officials: Don't make someone fill out a form if they don't want to. Use email to send responses, instead of charging for a ream of paper that will eventually be recycled. If you're using personal email to get around public record requests, consider another line of work.

I think it's also worth it to read the preamble of the Public Records Act every now and then: "The people of this state do not yield their sovereignty to the agencies that serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may maintain control over the instruments that they have created."

Whether the administration in Montesano knows it or not, they're actually in the middle of a big debate over whether privacy rights of local government officials trump a requester's right to information.

I attended a forum in Puyallup last week, sponsored by the Washington Coalition for Open Government, which looked at the issue of public officials using personal devices to send or create public documents.

Recently, a requester asked the city for all the public records on Montesano City Councilwoman Marisa Salzer's phone and personal computer. As it happens, a nearly identical request was made to a council member in the city of Puyallup. That council member refused to allow access — and the issue is headed to court. An earlier ruling found against the city of Puyallup, but it's on appeal.

"A city attorney doesn't have king-like powers over council members or city officials," Puyallup City Attorney Kevin Yamamoto told those at the forum. "City attorneys just provide legal advice to cities. Nobody has to follow our advice. We can provide excellent advice squarely within the framework of the law and they can choose to ignore it. I can't order a council member to fess up a personal device. The way we've been treating it recently is to notify the council member that the request is potentially for a search of their device to look for public records and they can choose under the constitution

right now whether to assert their Article I, Section 7 privacy rights under the constitution. We're in a lawsuit now to determine whether the privacy rights under the constitution trumps the Public Records Act."

Pierce County Prosecutor Mark Lindquist is taking a case to the state Supreme Court to see if he has to turn his personal cell phone over in a public records request. He lost a case on an earlier ruling in Appeals Court.

"Nobody told me I was waiving my constitutional rights when I used my cell phone," said attorney Dan Hamilton, representing Lindquist.

"Let's take it to the next step," added Yamamoto. "Let's have a requirement to have an elected official have a constant recording device with them. Because then we can monitor everything they do. Does that feel comfortable to you? It seems sort of absurd, doesn't it? There has to be some point where they have privacy and privacy trumps the public's right to know. At some point, that constitutional privacy must trump the public's right to know and where that ends is the policy debate."

What's the counter argument? Walter Neary, a former Lakewood councilman and one-time reporter who sits on the Washington Coalition for Open Government, sums it up: "If we can conceal public business on a private device, then you've created a golden ticket to corruption because all I would have to do is do public business on a personal device and I can be as corrupt as I want."

Steven Friederich is editor of The Vidette. This is his last column. If you need to reach him, emailreportersteven@gmail.com.